

**REMARKS****I. Status of Claims**

Claims 1-7, 9, 11 and 14 are pending in this application. Claims 1-7, 9, 11 and 14 have been amended. Claim 14 is currently withdrawn. Claims 1-7, 9 and 11 have been rejected. No new subject matter is introduced with amendment of the claims. Support for the %identity may be found throughout the specification including, without limitation, page 2, lines 19-21.

**II. Double Patenting**

The Examiner has provisionally rejected claims 1-7, 9 and 11 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 27, 28, 36, 38, 45 and 46 of Massignani et al., (US Application No.: 10/472,681).

Applicants respectfully request that the examiner hold this rejection in abeyance until such time as there is an indication of otherwise allowable subject matter. Only at that time will the Applicants be able to determine whether an obviousness-type double patenting rejection is applicable and at such time Applicants may amend 10/472,681 to remove such claims if necessary. Further, Applicants note that in fact the claims in 10/472,681 were amended via a response filed August 17, 2009, and therefore, Applicants respectfully request that the Examiner reassess the obviousness-type double patenting rejection in light of the amended claims.

**III. Rejections under 35 U.S.C. § 112, second paragraph**

Claim 1 (and claim 3 dependent thereon) is rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention.

Applicants respectfully traverse the rejection and its supporting remarks. However, in order to advance prosecution, but without prejudice or disclaimer, applicants have amended claim 1 to recite “a substitution at one or more of amino acids corresponding to Glu-109, Glu-111 or Glu-120 of SEQ ID NO: 1.”

Applicants therefore respectfully request that the Examiner withdraw the rejection of claim 1 under 35 U.S.C. §112, second paragraph.

Claim 1-3 and 11 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention.

Applicants respectfully traverse the rejection and its supporting remarks. However, in order to advance prosecution, but without prejudice or disclaimer, applicants have amended claim 1 to remove the recitation “mutant *Neisseria meningitidis* ADP-ribosylating enzyme”.

Applicants therefore respectfully request that the Examiner withdraw the rejection of claims 1-3 and 11 under 35 U.S.C. §112, second paragraph.

#### **IV. Rejection under 35 U.S.C. § 112, first paragraph, enablement**

Claims 1-3, 5-7, 9, and 11 are rejected under 35 U.S.C. §112, first paragraph, as allegedly not reasonably providing enablement for any mutant *Neisseria meningitidis* ADP-ribosylating protein or fragments thereof with any substitution at Glu-109 or Glu-111 or Glu-120.

Applicants respectfully traverse the rejection and its supporting remarks. However, in order to advance prosecution, but without prejudice or disclaimer, applicants have amended claim 1 to remove the recitation “mutant *Neisseria meningitidis* ADP-ribosylating enzyme”.

Applicants therefore respectfully request that the Examiner withdraw the rejection of claims 1-3, 5-7, 9 and 11 under 35 U.S.C. §112, first paragraph, enablement.

#### **V. Rejection under 35 U.S.C. § 112, first paragraph, written description**

Claims 1-3, 5-9, and 11 are rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement.

Applicants respectfully traverse the rejection and its supporting remarks. However, in order to advance prosecution, but without prejudice or disclaimer, applicants have amended claim 1 to remove the recitation “mutant *Neisseria meningitidis* ADP-ribosylating enzyme”.

Applicants therefore respectfully request that the Examiner withdraw the rejection of claims 1-3, 5-9 and 11 under U.S.C. §112, first paragraph, written description.

**CONCLUSION**

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 223002103000. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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